Supreme Court, U.S.
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Nos. 92-264 and 92-280

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

ARCADIA, OHIO, *et al.*,
Petitioners,

v.

OHIO POWER COMPANY, *et al.*,
Respondents.

FEDERAL ENERGY REGULATORY COMMISSION,
Petitioner,

v.

OHIO POWER COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF ON BEHALF OF RESPONDENTS MILES INC., OLIN CORPORATION, AND PPG INDUSTRIES, INC.

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September 1, 1992

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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DESCRIPTION OF INDUSTRIAL RESPONDENTS

This brief is presented on behalf of Miles Inc., Olin Corporation, and PPG Industries, Inc., collectively referred to herein as "Industrial Respondents." [1] Indus-

[1] PPG subsidiaries which are not wholly owned are Belletech Corp., Arkansas Chemical Inc., Quantum Technologies, Inc., Transitions Optical, Inc., AZDEL, Inc., Chemfil Canada, Ltd., Guangdong Float Glass, PPG-Nanchang Chemical Technology Development Corp., PPG Industries (France), Asahimas Subentra Chemical,

trial Respondents were intervenors in the cases below before the Federal Energy Regulatory Commission and the Court of Appeals, including the remand from this Court. Additionally, Industrial Respondents were respondents and participants when this case was previously before this Court and the Court unanimously reversed the D.C. Circuit's ruling. *Arcadia, Ohio v. Ohio Power*, 111 S.Ct. 415 (1990).

Industrial Respondents are large West Virginia industrial retail electric service customers of Wheeling Power Company ("Wheeling"), an entire requirements wholesale customer of Respondent Ohio Power Company ("Ohio Power"). Wheeling and Ohio Power are two of the operating public utility subsidiaries of American Electric Power Company ("AEP").

Industrial Respondents are or have been large employers in the Northern Panhandle region of West Virginia, and provide many jobs to their own employees and to satellite vendors and businesses in their geographical region. Industrial customers of Wheeling consume nearly

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Ampaspace, Industrie Vernici Italiane, Asahi-Penn Chemical Co., Shinnikka PPG Co., Ltd., AZDEL Europe, Dongju Industrial Co., PPG Iberica, PPG Industries Taiwan Ltd., Taiwan Chlorine Industries, PFG Fiber Glass, PPG-Siam Silica Co., Inveca-Pittsburgh and VFG-Sudamtex.

When the Industrial Respondents were previously before the Court in this case, Miles Inc., was named Mobay Corporation and LCP Chemicals, Inc., was then a member of the industrial group.

Olin subsidiaries which are not wholly owned are Aquachlor (Proprietary) Limited, Asahi-Olin Ltd., Chlor-Chem Limited, Empire of Carolina, Inc., Etoxyl, C.A., Hydrochim, S.A., The Industrial Credit and Investment Corporation of India Limited, Indy Electronics, Inc., Judd-Olin (U.K.) Limited, Langenberg Kupfer und Messingwerke GmbH & Co. KG, Nordesclor S.A., OCG Holdings, Inc., OCG Microelectronic Materials AG, OCG Microelectronic Materials Limited, OCG Microelectronic Materials N.V., OCG Micro Electronic Materials S.A., OCG Microelectronic Materials S.r.l., Productora de Alcoholes Hidratados, C.A. (PRALCA), Sukulu Mines Limited and Yamaha-Olin Metal Corporation.

60% of Wheeling's retail sales of electricity. Industrial Respondents, together with former respondent LCP Chemicals, constituted more than 40% of Wheeling's retail sales for the years which are the subject of the FERC case at issue herein.

Industrial Respondents pay retail rates set for Wheeling by the Public Service Commission of West Virginia ("PSCWV"). The PSCWV includes in Wheeling's rates a component, adjusted at least semi-annually, to provide for recovery of the cost of wholesale power and energy Wheeling purchases from Ohio Power. Thus, the cost of power purchased by Industrial Respondents includes the cost of Wheeling's purchases from Ohio Power, including the costs at issue in this proceeding.[2]

Of the $10.394 million Ohio Power refunded to Wheeling on May 6, 1988 covering the period from July 1982 through January 1988, approximately $4.309 million or 42 percent would be due to the Industrial Respondents and to former respondent LCP Chemicals, exclusive of additional refunds and interest accruing since that time.

STATEMENT

Industrial Respondents accept the Statement and support and adopt the Questions Presented and Reasons for Granting the Petition contained in the August 10, 1992, Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit filed by Petitioners, Arcadia, Ohio, et al.

All applicable statutes, regulations, decisions, and authorities are contained in the aforesaid Petition for Certiorari.

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[2] Ohio Power's wholesale rates to Wheeling and to petitioners Arcadia, Ohio, *et al.* are not identical but are affected in the same manner by the issues raised in the petition for certiorari.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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